

USDC SCAN INDEX SHEET



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3:00-CV-01240 KLEMZ V. USA
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

SAMUEL KLEMZ, a minor, by and)	Case No.:
through his Guardian ad Litem,)	
DOUGLAS KLEMZ; and JESSICA)	COMPLAINT FOR MONEY DAMAGES
KLEMZ,)	'00CV 01240 E (LSP)
Plaintiffs,)	
v.)	Federal Tort Claims Act
UNITED STATES OF AMERICA, and)	28 U.S.C. Section 2671, et
DOES 1 through 10,)	seq.
Defendants.)	28 U.S.C. Section 1346(b),
	et seq.
	28 U.S.C. Section 1367
	28 U.S.C. 1402(c), et seq.

COME NOW plaintiffs, SAMUEL KLEMZ, a minor, by and through his
 Guardian ad Litem, DOUGLAS KLEMZ; and JESSICA KLEMZ, and for causes
 of action against defendants, allege as follows:

FIRST CAUSE OF ACTION

(Negligence)

1. The injuries and damages upon which this action is based
 occurred at the Naval Medical Center in San Diego, California.

2. DOUGLAS KLEMZ is the minor plaintiff's father. At the
 time of the events leading to this action he was on active duty
 with the United States Marine Corps. His dependents are therefore
 entitled to receive medical care from defendant UNITED STATES OF

1 AMERICA.

2 3. Plaintiff JESSICA KLEMZ has been married to DOUGLAS KLEMZ
3 for five (5) years. Plaintiff JESSICA KLEMZ is therefore entitled
4 to receive medical care from defendant UNITED STATES OF AMERICA.

5 4. Plaintiff SAMUEL KLEMZ, by and through his Guardian ad
6 Litem, DOUGLAS KLMEZ, is a dependent child of DOUGLAS KLEMZ, and as
7 such is entitled to receive medical care from defendant UNITED
8 STATES OF AMERICA.

9 5. At all times herein mentioned, defendant UNITED STATES OF
10 AMERICA was, and now is, a sovereign entity responsible for the
11 management and operation of the Naval Medical Center, in San Diego,
12 California.

13 6. This action is brought under the provisions of the
14 Federal Tort Claims Act, 28 U.S.C. Section 2671, *et seq.*, and 28
15 U.S.C. Section 1346(b), *et seq.*, to provide subject matter
16 jurisdiction. Further, this court has supplemental jurisdiction
17 over DOE defendants 1 through 10 in accordance with 28 U.S.C.
18 Section 1367.

19 7. The residence and domicile of plaintiffs JESSICA KLEMZ
20 and SAMUEL KLEMZ was at all times applicable the County of San
21 Diego, State of California, Southern District of California, in
22 accordance with 28 U.S.C. Section 1402(b).

23 8. The amount in controversy herein, exclusive of interest
24 and costs, exceeds the sum of \$10,000.00.

25 9. The true names and capacities, whether individual,
26 corporate, associate, or otherwise of defendants DOES 1 through 10,
27 inclusive, are unknown to plaintiffs, who therefore sue said
28 defendants by such fictitious names. Plaintiffs will amend this

1 complaint to show the true names and capacities when they have been
2 ascertained. Plaintiffs are informed and believe, and thereon
3 allege, that each of the defendants designated herein as a DOE is
4 legally responsible in some manner for events and happenings herein
5 referred to and caused the damages herein alleged.

6 10. The acts and conduct herein alleged were performed by
7 defendants, or agents and employees of defendants acting in the
8 course and scope of said agency and employment and with the
9 knowledge and consent of defendants. Further, defendants are
10 estopped from denying their liability for the facts and conduct
11 alleged as a result of their affirmative misrepresentation and
12 affirmative concealment of material facts regarding the
13 circumstances giving rise to plaintiffs' injuries, including but
14 not limited to acts of evasion, falsehood, and the alteration of
15 documents relating to the identity and status of personnel who
16 provided care and treatment to plaintiffs SAMUEL KLEMZ, and JESSICA
17 KLEMZ.

18 11. On or about January 5, 1998, plaintiff JESSICA KLEMZ came
19 under the care and treatment of defendants. Plaintiff employed
20 defendants to care for and treat her, and her unborn son, plaintiff
21 SAMUEL KLEMZ, and to do all things necessary and proper in
22 connection therewith.

23 12. Defendants so negligently and carelessly cared for and
24 treated, as well as negligently supervised the care and treatment
25 of, plaintiffs JESSICA KLEMZ, and SAMUEL KLEMZ, so as to cause
26 plaintiffs to suffer severe injuries.

27 13. The negligence and carelessness of defendants consisted
28 of the failure to use, and to insist upon the use of, that degree

1 of skill and care ordinarily used by health care professionals
2 engaged in the practice of their profession in the same or similar
3 locality and under the same or similar circumstances. Further,
4 defendants were negligent in the maintenance, inspection, and use
5 of equipment necessary and proper in connection with the care and
6 treatment of plaintiffs JESSICA KLEMZ and SAMUEL KLEMZ.

7 14. As a legal result of the negligence and carelessness of
8 defendants, plaintiff JESSICA KLEMZ was hurt and injured in her
9 health, strength, and activity sustaining injuries to her body and
10 shock and injury to her nervous system and person, all of which
11 have caused, and continue to cause plaintiff permanent injury in
12 her health and physical ability, and will cause plaintiff mental,
13 physical, and nervous pain and suffering, fright, grief, anxiety,
14 and apprehension, all to her general damage in an amount in excess
15 of \$10,000.00.

16 15. As a legal result of the negligence and carelessness of
17 defendants, plaintiff SAMUEL KLEMZ was hurt and injured in his
18 health, strength, and activity, sustaining injuries to his body and
19 shock and injury to his nervous system and person, all of which
20 have caused, and continue to cause plaintiff permanent injury in
21 his health and physical ability, and will cause plaintiff mental,
22 physical, and nervous pain and suffering, fright, grief, anxiety,
23 and apprehension, all to his general damage in an amount in excess
24 of \$10,000.00.

25 16. As a further legal cause of the negligence and
26 carelessness on the part of defendants, plaintiffs were each
27 required to and did incur medical, nursing, and incidental expenses
28 and were each further required to employ the services of friends

1 and family members to provide nursing and related services. The
2 exact amount of such expenses are unknown to plaintiffs at this
3 time inasmuch as the same is continuing and plaintiffs will seek
4 leave of the court to prove said amount at the time of trial.

5 17. As a further legal result of the negligence and
6 carelessness on the part of defendants, plaintiffs JESSICA KLEMZ
7 and SAMUEL KLEMZ were permanently hurt and injured in their health
8 and physical ability, thereby causing a loss of future earnings,
9 all to their damage in an amount to be proven at the time of trial.

10 18. On or about December 20, 1999, plaintiffs submitted a
11 claim to the Naval Medical Center San Diego. Defendant UNITED
12 STATES OF AMERICA has failed to make a final disposition of said
13 claim and plaintiffs hereby deem defendant's failure to act as a
14 final denial of the claim.

15 SECOND CAUSE OF ACTION

16 (Lack of Informed Consent)

17 19. Plaintiffs refer to, reallege, and incorporate herein by
18 reference each and every allegation contained in paragraphs 1
19 through 18 of the First Cause of Action as though fully set forth
20 herein.

21 20. Defendants, and each of them, failed to disclose to
22 plaintiff JESSICA KLEMZ sufficient information concerning the risks
23 of possible complications and the alternatives to their approach to
24 the care, treatment, and follow up care so as to enable her to make
25 an informed decision regarding it.

26 21. Had such information been disclosed to plaintiff JESSICA
27 KLEMZ, she would have withheld consent to said treatment as would
28 a reasonably prudent person under the same or similar

1 circumstances.

2 22. As a legal result of the failure of defendants, and each
3 of them, to obtain an informed consent from plaintiffs, plaintiffs
4 JESSICA KLEMZ and SAMUEL KLEMZ were hurt and injured in their
5 health, strength, and activity sustaining injury to their bodies
6 and shock to their nervous system and person, all of which have
7 caused, and continue to cause, said plaintiffs great mental and
8 nervous pain and suffering, fright, grief, anxiety, and
9 apprehension, all to their general damages in an amount in excess
10 of \$25,000.00.

11 23. As a further legal result of failure of defendants, and
12 each of them, to obtain an informed consent from plaintiffs,
13 plaintiffs JESSICA KLEMZ and SAMUEL KLEMZ were required to, and did
14 employ physicians, surgeons, and other health care providers to
15 examine, treat, and care for them and did incur medical, nursing,
16 and incidental expenses and was further required to employ the
17 services of friends and family members to provide nursing and
18 related services. The exact amount of such expense is unknown to
19 plaintiffs at this time inasmuch as the same is continuing and
20 plaintiffs will seek leave of court to prove said amount at the
21 time of trial.

22 24. As a legal result of the failure of defendants, and each
23 of them, to obtain an informed consent from plaintiffs, plaintiffs
24 JESSICA KLEMZ and SAMUEL KLEMZ were permanently hurt and injured in
25 their health and physical ability, thereby causing a loss of future
26 earnings, all to their damage in an amount to be proven at the time
27 of trial.

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1 THIRD CAUSE OF ACTION

2 (Negligent Infliction of Emotional Distress)

3 25. Plaintiffs refer to, reallege, and incorporate herein by
4 reference each and every allegation contained in the First and
5 Second Causes of Action as though fully set forth herein.

6 26. Plaintiff JESSICA KLEMZ is the mother of plaintiff SAMUEL
7 KLEMZ. Plaintiff JESSICA KLEMZ retained the services of
8 defendants, and each of them, to handle the circumstances of her
9 labor and delivery. She was awake during the ultimate delivery of
10 her child on January 5, 1998. As a result of the negligence of the
11 defendants, and each of them, plaintiff JESSICA KLEMZ observed and
12 witnessed the injuries being inflicted on her child and was then
13 aware that they were as a result of the negligence of the
14 defendants. Defendants, and each of them, breached the duty
15 arising from their professional and fiduciary relationship with
16 plaintiff JESSICA KLEMZ.

17 27. As a direct result of the conduct of the defendants, and
18 each of them, plaintiff JESSICA KLEMZ has suffered severe emotional
19 and psychological distress as a result of the sensory and
20 contemporaneous observation of her child's injuries.

21 28. As a further direct result of the aforementioned conduct
22 of defendants, and each of them, plaintiff JESSICA KLEMZ has
23 suffered, and continues to suffer, injury to her health, strength,
24 and activity, and continues to suffer severe psychological and
25 emotional injury, shock, chagrin, worry, fright, apprehension, and
26 depression of a permanent and lasting nature, all to her damage in
27 an amount in excess of \$25,000.00.

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1 WHEREFORE, plaintiffs pray judgment against defendant as
2 follows:

3 1. For general and special damages as to plaintiffs JESSICA
4 KLEMZ and SAMUEL KLEMZ in an amount to be proven at the time of
5 trial;

6 2. For pre-judgment interest as allowed by law;

7 3. For costs of suit incurred herein, and

8 4. For such other and further relief as the court may deem
9 just and proper.

10 DATED: June 20, 2000

LAW OFFICES OF ROBERT VAAGE

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12 By: 

13 Robert F. Vaage
14 Attorney for Plaintiffs
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JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS SAMUEL KLEMZ, a minor,
by and through his Guardian ad
Litem, DOUGLAS KLEMZ; and
JESSICA KLEMZ,

(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF Wayne Cty
(Michigan)
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS UNITED STATES OF AMERICA,
and DOES 1 through 10,

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego, CA
(IN U.S. PLAINTIFF CASES ONLY) DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
LAW OFFICES OF ROBERT VAAGE
110 W. C St., Suite 2105
San Diego, CA 92101
(619) 338-0505

ATTORNEYS (IF KNOWN)

'00CV 01240 E' (LSP)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ U.S. Government Plaintiff ☐ Federal Question
(U.S. Government Not a Party)
- ☒ U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|--------------------------|--------------------------|---|--------------------------|--------------------------|
| Citizen of This State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> | <input type="checkbox"/> |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Federal Tort Claims Act, 28 U.S.C. Section 2671, et seq., and 28 U.S.C. Section 1346(b), et seq.; Medical Malpractice

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Maritime Act <input type="checkbox"/> 152 Recovery of Defuncted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 161 Other Contract <input type="checkbox"/> 162 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 110 Airplane <input type="checkbox"/> 115 Airplane Product Liability <input type="checkbox"/> 120 Assault, Libel & Slander <input type="checkbox"/> 130 Federal Employers' Liability <input type="checkbox"/> 140 Marine <input type="checkbox"/> 145 Marine Product Liability <input type="checkbox"/> 150 Motor Vehicle <input type="checkbox"/> 155 Motor Vehicle Product Liability <input type="checkbox"/> 160 Other Personal Injury	<input checked="" type="checkbox"/> 165 Personal Injury - Medical Malpractice <input type="checkbox"/> 165 Personal Injury - Product Liability <input type="checkbox"/> 168 Airplane Personal Injury Product Liability <input type="checkbox"/> 170 Other Personal Injury <input type="checkbox"/> 171 Truth in Lending <input type="checkbox"/> 180 Other Personal Property Damage <input type="checkbox"/> 185 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Suits of Property 21 USC81 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Trust <input type="checkbox"/> 650 Airline Bags <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 670 Other LABOR <input type="checkbox"/> 710 Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Legislation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Bankruptcy 11 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 430 Copyrights <input type="checkbox"/> 435 Patents <input type="checkbox"/> 440 Trademarks SOCIAL SECURITY <input type="checkbox"/> 451 SSA (13958) <input type="checkbox"/> 452 Black Lung (923) <input type="checkbox"/> 453 DDC/DWW (405(a)) <input type="checkbox"/> 454 SSID Title XVI <input type="checkbox"/> 455 RSI (974a) FEDERAL TAX SLOTS <input type="checkbox"/> 470 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 471 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 American <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 430 Commerce/ICC Resources <input type="checkbox"/> 440 Corporations <input type="checkbox"/> 450 Railway Inland and Carriage Organizations <input type="checkbox"/> 460 Selective Service <input type="checkbox"/> 470 Securities/Commodities Exchange <input type="checkbox"/> 475 Customer Challenge 12 USC <input type="checkbox"/> 481 Agricultural Acts <input type="checkbox"/> 492 Economic Stabilization Act <input type="checkbox"/> 493 Environmental Matters <input type="checkbox"/> 494 Energy Allocation Act <input type="checkbox"/> 495 Freedom of Information Act <input type="checkbox"/> 496 Appeal of Fee Determinations Under Equal Access to Justice <input type="checkbox"/> 497 Constitutionality of State <input type="checkbox"/> 498 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Eminent Domain <input type="checkbox"/> 230 Rent Laws & Eviction <input type="checkbox"/> 240 Ties to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 401 Voting <input type="checkbox"/> 402 Employment <input type="checkbox"/> 403 Housing/Accommodations <input type="checkbox"/> 404 Welfare <input type="checkbox"/> 405 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 520 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 551 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.p. 23

DEMAND \$ (Proof)

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY (See Instructions)

DATE June 20, 2000

SIGNATURE OF ATTORNEY OF RECORD

Docket Number

Robert F. Vaage

6/21/00 16345 Bk 150 -